



U.S. Department of Justice

United States Attorney  
Southern District of New York

86 Chambers Street  
New York, New York 10007

February 8, 2018

BY ECF

Hon. John G. Koeltl  
United States District Judge  
United States Courthouse  
500 Pearl Street  
New York, NY 10007

Re: *Zabaleta v. Duke*, 17 Civ. 7512 (JGK)

Dear Judge Koeltl:

I write respectfully on behalf of the federal defendants ("the Government") in this mandamus action in which Plaintiff seeks an order compelling the U.S. Citizenship and Immigration Services ("USCIS") Administrative Appeals Office ("AAO") to adjudicate his appeal USCIS's denial of a special immigrant petition, form I-360. I write respectfully, pursuant to Rule 2.B of Your Honor's Individual Practices, to request a pre-motion conference in connection with the government's anticipated motion to dismiss as moot, and a stay of the February 8, 2018, answer deadline until after the conference.

After the mandamus petition was filed, the AAO, in November 2017, issued a notice of intent to dismiss the appeal ("NOID"), based in part, on Plaintiff's gang membership in the Mara Salvatrucha (MS-13) gang. On or about December 26, 2017, the AAO issued a decision dismissing Plaintiff's appeal. In light of the fact that USCIS has granted Plaintiff the sole relief he seeks in his complaint, there is nothing for the Court to determine or compel USCIS to do by way of mandamus. Accordingly, we request that the complaint be dismissed at moot. *See generally Lawal v. U.S. I.N.S.*, No. 94 Civ. 4606 (CSH), 1996 WL 384917 (S.D.N.Y. July 10, 1996) (finding that action was moot because INS had adjudicated the I-130 petition); *Al Shamleh v. Poulos*, No. 2:08 1949 MBS, 2008 WL 3318881 (D. S.C. Aug. 7, 2008) (dismissing mandamus action as moot due to approval of I-130 petitions); *Liu v. Mukasey*, No. C08 180RSM, 2008 WL 1744626 (W.D. Wash. Apr. 11, 2008) (finding mandamus action seeking adjudication of an I-751 application moot after USCIS's denial of the application).

Finally, should the Court seek to issue a briefing schedule in lieu of a conference, the Government proposes the following briefing schedule, to which Plaintiff's counsel consents:

Government's motion due by March 8, 2018;  
Plaintiff's objection due by April 9, 2018; and  
Government's reply due by April 18, 2018.

A PRE-MOTION CONFERENCE  
WILL BE HELD ON THURSDAY,  
FEBRUARY 22, 2018, AT 3:00PM.  
SO ORDERED.  
2/9/18 *John G. Koeltl*  
✓ 5 0 ✓

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I thank the Court for its consideration of this request.

Respectfully submitted,

GEOFFREY S. BERMAN  
United States Attorney

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cc: By ECF  
Plaintiff's Counsel of Record